

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:17-cv-02599-CKK

AMERICAN OVERSIGHT v. U.S. ENVIRONMENTAL
 PROTECTION AGENCY

Assigned to: Judge Colleen Kollar-Kotelly

Cause: 05:552 Freedom of Information Act

Date Filed: 12/05/2017

Jury Demand: None

Nature of Suit: 895 Freedom of
 Information Act

Jurisdiction: U.S. Government Defendant

Plaintiff

AMERICAN OVERSIGHT

represented by **Hart W. Wood**
 AMERICAN OVERSIGHT
 1030 15th Street, NW
 Suite B255
 Washington, DC 20005
 (202) 873-1743
 Fax: (202) 871-6523
 Email: hart.wood@americanoversight.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sara Kaiser Creighton
 AMERICAN OVERSIGHT
 1030 15th Street, NW
 Suite B255
 Washington, DC 20005
 (202) 869-5246
 Fax: (202) 871-6523
 Email: sara.creighton@americanoversight.org
ATTORNEY TO BE NOTICED

V.

Defendant

**U.S. ENVIRONMENTAL
 PROTECTION AGENCY**

represented by **Marsha Wellknown Yee**
 U.S. ATTORNEY'S OFFICE FOR THE
 DISTRICT OF COLUMBIA
 555 Fourth Street, NW
 Washington, DC 20530
 (202) 252-2539
 Fax: (202) 252-2599
 Email: marsha.yee@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/05/2017	<u>1</u>	COMPLAINT against U.S. ENVIRONMENTAL PROTECTION AGENCY (Filing fee \$ 400 receipt number 0090-5234180) filed by AMERICAN OVERSIGHT. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons for USAO, # <u>3</u> Summons for AG, # <u>4</u> Summons for EPA)(Creighton, Sara) (Entered: 12/05/2017)
12/05/2017	<u>2</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by AMERICAN OVERSIGHT (Creighton, Sara) (Entered: 12/05/2017)
12/08/2017		Case Assigned to Judge Colleen Kollar-Kotelly. (zsb) (Entered: 12/08/2017)
12/08/2017	<u>3</u>	SUMMONS (3) Issued Electronically as to U.S. ENVIRONMENTAL PROTECTION AGENCY, U.S. Attorney and U.S. Attorney General (Attachment: # <u>1</u> Notice and Consent)(zsb) (Entered: 12/08/2017)

12/11/2017	<u>4</u>	ORDER ESTABLISHING PROCEDURES FOR CASES ASSIGNED TO JUDGE COLLEEN KOLLAR–KOTELLY. Signed by Judge Colleen Kollar–Kotelly on 12/11/17. (DM) (Entered: 12/11/2017)
12/20/2017	<u>5</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 12/13/2017. (Answer due for ALL FEDERAL DEFENDANTS by 1/12/2018.), RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 12/13/17., RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. U.S. ENVIRONMENTAL PROTECTION AGENCY served on 12/12/2017 (Attachments: # <u>1</u> Exhibit A)(Creighton, Sara) (Entered: 12/20/2017)
01/08/2018	<u>6</u>	NOTICE of Appearance by Marsha Wellknown Yee on behalf of U.S. ENVIRONMENTAL PROTECTION AGENCY (Yee, Marsha) (Entered: 01/08/2018)
01/08/2018	<u>7</u>	MOTION for Extension of Time to <i>File Defendant's Response to Plaintiff's Complaint</i> by U.S. ENVIRONMENTAL PROTECTION AGENCY (Attachments: # <u>1</u> Text of Proposed Order)(Yee, Marsha) (Entered: 01/08/2018)
01/09/2018	<u>8</u>	RESPONSE re <u>7</u> MOTION for Extension of Time to <i>File Defendant's Response to Plaintiff's Complaint</i> filed by AMERICAN OVERSIGHT. (Attachments: # <u>1</u> Exhibit A)(Creighton, Sara) (Entered: 01/09/2018)
01/09/2018		MINUTE ORDER. The Court is in receipt of Defendant's <u>7</u> Motion for Extension of Time to File Defendant's Response to Plaintiff's Complaint, and Plaintiff's <u>8</u> Response thereto. Defendant moves for an extension of time from January 12, 2018 to February 12, 2018 to file its response to Plaintiff's complaint. Defendant represents that the EPA needs additional time to prepare its response to the complaint, and that defense counsel is busy with other matters. This is the first request for an extension that Defendant has sought. Plaintiff has filed a response indicating that it only consents to Defendant receiving an extension if the Court sets a deadline for a Joint Status Report regarding the status of Plaintiff's FOIA request one week after Defendant's Answer is due. Defendant's motion is GRANTED. Defendant shall file its Answer by no later than FEBRUARY 12, 2018. In addition, the Court ORDERS that the parties shall MEET AND CONFER and file a Joint Status Report proposing a schedule for proceeding in this matter. The schedule should address the status of Plaintiff's FOIA request, the anticipated number of documents responsive to Plaintiff's FOIA request, the anticipated date(s) for release of the documents requested by Plaintiff, whether a motion for an Open America stay is likely in this case, whether a Vaughn index will be required in this case, etc. The parties shall file the schedule not later than FEBRUARY 19, 2018. Signed by Judge Colleen Kollar–Kotelly on 1/9/2018. (lcckk3) (Entered: 01/09/2018)
01/09/2018		Set/Reset Deadlines: Answer to complaint due by 2/12/2018. Joint Schedule due by 2/19/2018. (dot) (Entered: 01/10/2018)
02/12/2018	<u>9</u>	ANSWER to <u>1</u> Complaint, by U.S. ENVIRONMENTAL PROTECTION AGENCY.(Yee, Marsha) (Entered: 02/12/2018)
02/16/2018	<u>10</u>	Joint STATUS REPORT by U.S. ENVIRONMENTAL PROTECTION AGENCY. (Yee, Marsha) (Entered: 02/16/2018)
02/16/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>10</u> Joint Status Report. The parties indicate that Defendant has collected some responsive records and is still in the process of searching for others. Defendant intends to produce non–exempt responsive records by March 2, 2018. The parties request leave to file another Joint Status Report on or before March 16, 2018. The parties are ORDERED to file a further Joint Status Report by no later than MARCH 16, 2018 updating the Court on the status of Plaintiff's FOIA request and whether further litigation in this case will be necessary. Signed by Judge Colleen Kollar–Kotelly on 2/16/2018. (lcckk3) (Entered: 02/16/2018)
02/20/2018		Set/Reset Deadlines: Joint Status Report due by 3/16/2018. (tb) (Entered: 02/20/2018)
03/05/2018	<u>11</u>	AMENDED COMPLAINT against U.S. ENVIRONMENTAL PROTECTION AGENCY filed by AMERICAN OVERSIGHT.(Creighton, Sara) (Entered: 03/05/2018)

03/16/2018	<u>12</u>	Joint STATUS REPORT by U.S. ENVIRONMENTAL PROTECTION AGENCY. (Yee, Marsha) (Entered: 03/16/2018)
03/16/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>12</u> Joint Status Report. The parties indicate that Defendant has collected and produced some responsive records and is still in the process of searching for others. The parties request leave to file another Joint Status Report on or before April 25, 2018. The parties are ORDERED to file a further Joint Status Report by no later than APRIL 25, 2018 updating the Court on the status of Plaintiff's FOIA requests and whether further litigation in this case will be necessary. In addition, Defendant indicates that it will answer Plaintiff's Amended Complaint by March 19, 2018, and may move for Open America stay. If Defendant intends to file such a motion, it should do so as soon as possible. In addition, the necessity of an Open America stay is one of the issues that should be addressed in the parties' next Status Report. Signed by Judge Colleen Kollar-Kotelly on 3/16/2018. (lcckk3) (Entered: 03/16/2018)
03/16/2018		Set/Reset Deadlines: Answer to Amended Complaint due by 3/19/2018. Joint Status Report due by 4/25/2018. (dot) (Entered: 03/19/2018)
03/19/2018	<u>13</u>	ANSWER to <u>11</u> Amended Complaint by U.S. ENVIRONMENTAL PROTECTION AGENCY.(Yee, Marsha) (Entered: 03/19/2018)
04/25/2018	<u>14</u>	Joint STATUS REPORT by U.S. ENVIRONMENTAL PROTECTION AGENCY. (Yee, Marsha) (Entered: 04/25/2018)
04/26/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>14</u> Joint Status Report. The parties indicate that Defendant has collected and produced some responsive records and is still in the process of searching for others. The parties request leave to file another Joint Status Report on or before May 16, 2018. The parties are ORDERED to file a further Joint Status Report by no later than MAY 16, 2018 updating the Court on the status of Plaintiff's FOIA requests. Signed by Judge Colleen Kollar-Kotelly on 4/26/2018. (lcckk3) (Entered: 04/26/2018)
04/26/2018		Set/Reset Deadlines: Joint Status Report due by 5/16/2018. (dot) (Entered: 04/30/2018)
05/16/2018	<u>15</u>	Joint STATUS REPORT by U.S. ENVIRONMENTAL PROTECTION AGENCY. (Yee, Marsha) (Entered: 05/16/2018)
05/24/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>15</u> Joint Status Report. The parties represent that they have been meeting and conferring, and are continuing to meet and confer, about the scope of Plaintiff's FOIA requests and Defendant's searches in response to those requests. Plaintiffs ask that the Court order Defendant to begin productions by a date certain and process a certain amount of documents per month. It is Defendant's position that it is premature to set a schedule at this time because its searches have not yet been completed. Defendant also claims that it is unable to process documents as quickly as Plaintiff requests due in part to the numerous other FOIA requests and lawsuits that Plaintiff has filed. The Court will not order Defendant to adhere to any particular deadlines at this point. Defendant shall work diligently to process Plaintiff's FOIA requests, and the parties shall continue to meet and confer about mutually-agreeable timelines. The parties are ORDERED to file a further Joint Status Report by no later than JUNE 26, 2018 updating the Court on the status of Plaintiff's FOIA requests. Signed by Judge Colleen Kollar-Kotelly on 5/24/2018. (lcckk3) (Entered: 05/24/2018)
05/24/2018		Set/Reset Deadlines: Joint Status Report due by 6/26/2018. (kt) (Entered: 05/24/2018)
06/26/2018	<u>16</u>	Joint STATUS REPORT by U.S. ENVIRONMENTAL PROTECTION AGENCY. (Yee, Marsha) (Entered: 06/26/2018)
06/28/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>16</u> Joint Status Report. The parties represent that Defendant has concluded searches and located many thousands of records (approximately 12,650) that must now be reviewed. Defendant represents that it can initially process 250 records per month with an initial production on July 15, 2018, until October 15, 2018, at which point it can begin to process 500 records per month. Defendant represents that this schedule is in part necessitated by its ongoing efforts to process Plaintiff's many other FOIA requests. Defendant's Office of the Executive Secretariat, which is responsible for processing Plaintiff's requests in this

		case, is also processing at least 37 other FOIA requests submitted by Plaintiff in addition to the FOIA requests in this litigation. Plaintiff asks the Court to order Defendant to begin monthly rolling productions on July 15, 2018 and to process 500 records per month immediately. At this point, the Court finds Defendant's proposed schedule reasonable. Defendant is ORDERED to make rolling productions beginning on JULY 15, 2018. Defendant shall process 250 records per month until OCTOBER 15, 2018, at which point it shall begin to process 500 records per month. The parties shall file another Joint Status Report by no later than AUGUST 28, 2018. Signed by Judge Colleen Kollar-Kotelly on 6/28/2018. (lcckk3) (Entered: 06/28/2018)
06/28/2018		Set/Reset Deadlines: Joint Status Report due by 8/28/2018. (kt) (Entered: 06/28/2018)
08/28/2018	<u>17</u>	Joint STATUS REPORT by U.S. ENVIRONMENTAL PROTECTION AGENCY. (Yee, Marsha) (Entered: 08/28/2018)
08/29/2018		MINUTE ORDER. The Court is in receipt of the parties' <u>17</u> Joint Status Report. The parties represent that Plaintiff has withdrawn two of its three FOIA requests at issue in this case and has narrowed the scope of its remaining request. In return, Defendant has agreed to increase its processing rate to 500 records per month. Defendant anticipates that it will complete the processing of Plaintiff's remaining request by May 15, 2019. Plaintiff asks that the parties be ordered to file a further Joint Status Report by January 22, 2019. Defendant contends that this would be an unnecessary use of the parties' time and resources. Defendant asks that the parties not be required to file a further Joint Status Report until May 30, 2019. If any disputes arise between the parties regarding the processing of Plaintiff's FOIA request, the parties shall file a Joint Status Report by JANUARY 22, 2019. If no issues arise, and Defendant's processing of Plaintiff's request is on track, the parties need not file a report by that date. In that case, the parties shall file another Joint Status Report by no later than MAY 30, 2019. Signed by Judge Colleen Kollar-Kotelly on 8/29/2018. (lcckk3) (Entered: 08/29/2018)
01/16/2019	<u>18</u>	MOTION to Stay , MOTION for Extension of Time to <i>in Light of Lapse of Appropriations</i> by U.S. ENVIRONMENTAL PROTECTION AGENCY (Attachments: # <u>1</u> Text of Proposed Order)(Hudak, Brian) (Entered: 01/16/2019)
01/17/2019		MINUTE ORDER. The Court is in receipt of Defendant's <u>18</u> Motion for a Stay and Extension of Time in Light of Lapse of Appropriations. As of December 21, 2018, the appropriations act that had been funding the Department of Justice expired and appropriations to the Department lapsed. The same is true of funding for the EPA. Absent appropriated funds, attorneys at the DOJ are prohibited from working except in circumstances which do not apply to this case. Defendant requests a stay of the case and an extension of deadlines commensurate with the duration of the lapse in appropriations. Plaintiff takes no position on extending deadlines but opposes a stay. As the Department of Justice and the EPA are no longer receiving funding, Defendant's Motion is GRANTED. The parties are ORDERED to file a Joint Status Report 14 days after funding has been restored to the DOJ and the EPA containing the parties' proposals for further proceedings in this matter. Signed by Judge Colleen Kollar-Kotelly on 1-17-2019. (lcckk3) (Entered: 01/17/2019)
02/07/2019	<u>19</u>	NOTICE of Appearance by Hart W. Wood on behalf of AMERICAN OVERSIGHT (Wood, Hart) (Entered: 02/07/2019)
02/08/2019	<u>20</u>	Joint STATUS REPORT by U.S. ENVIRONMENTAL PROTECTION AGENCY. (Yee, Marsha) (Entered: 02/08/2019)
02/08/2019		MINUTE ORDER. The Court is in receipt of the parties' <u>20</u> Joint Status Report. Defendant indicates that during the 35-day lapse in appropriations it was unable to process records or deliver a production. Defendant has now resumed processing records and anticipates that it will complete its processing of responsive records by June 17, 2019. The Court ORDERS the parties to file a Joint Status Report on or before JUNE 28, 2019 informing the Court of the status of this case. Signed by Judge Colleen Kollar-Kotelly on 2-8-2019. (lcckk3) (Entered: 02/08/2019)
02/08/2019		Set/Reset Deadlines: Joint Status Report due by 6/28/2019. (dot) (Entered: 02/11/2019)
06/26/2019	<u>21</u>	Joint STATUS REPORT by U.S. ENVIRONMENTAL PROTECTION AGENCY. (Yee, Marsha) (Entered: 06/26/2019)

07/01/2019		MINUTE ORDER. The Court is in receipt of the parties' <u>21</u> Joint Status Report. Defendant indicates that it completed its processing and production of responsive, non-exempt records on June 17, 2019. Plaintiff requires additional time to review the produced records. The Court ORDERS the parties to file another Joint Status Report on AUGUST 22, 2019. Signed by Judge Colleen Kollar-Kotelly on 7/1/2019. (lcckk3,) (Entered: 07/01/2019)
07/01/2019		Set/Reset Deadlines: Joint Status Report due by 8/22/2019. (dot) (Entered: 07/02/2019)
08/22/2019	<u>22</u>	Joint STATUS REPORT by U.S. ENVIRONMENTAL PROTECTION AGENCY. (Yee, Marsha) (Entered: 08/22/2019)
08/22/2019		MINUTE ORDER. The Court is in receipt of the parties' <u>22</u> Joint Status Report. Defendant indicates that it completed its processing and production of responsive, non-exempt records on June 17, 2019. On August 19, 2019, Plaintiff provided its follow-up questions and requests which Defendant requires additional time to respond to. The Court ORDERS the parties to file another Joint Status Report on SEPTEMBER 18, 2019. Signed by Judge Colleen Kollar-Kotelly on 8-22-2019. (lcckk3) (Entered: 08/22/2019)
08/22/2019		Set/Reset Deadlines: Joint Status Report due by 9/18/2019. (dot) (Entered: 08/23/2019)
09/18/2019	<u>23</u>	Joint STATUS REPORT by U.S. ENVIRONMENTAL PROTECTION AGENCY. (Yee, Marsha) (Entered: 09/18/2019)
09/18/2019		MINUTE ORDER. The Court is in receipt of the parties' <u>23</u> Joint Status Report. Defendant indicates that it completed its processing and production of responsive, non-exempt records on June 17, 2019. On August 19, 2019, Plaintiff provided its follow-up questions and on September 12, 2019, Defendant provided its answers to the follow-questions. The parties request additional time to try to resolve the remaining issues. The Court ORDERS the parties to file another Joint Status Report on OCTOBER 18, 2019. Signed by Judge Colleen Kollar-Kotelly on 9-18-2019. (lcckk3) (Entered: 09/18/2019)